

ID: CCA-718131-13

Office:

UILC: 446.21-00

Number: **201411032**

Release Date: 3/14/2014

---

**From:**

**Sent:** Thursday, July 18, 2013 11:31 AM

**To:**

**Cc:**

**Subject:** Advice Response

This responds to your request for advice, sent on April 23, 2013, in connection with the timing of Taxpayer's payments under an agreement labeled as a swap. In that request, you state that the issue is: "Whether the payments, paid by [Taxpayer] to [Buyer] under the [Agreement], should be characterized as an 'adjustment to sale [price]' as the Taxpayer characterized them, and thus be fully deducted in the year of the payment as capital loss, or as a 'non-periodic payment,' and thus be amortized for the life of the [Agreement]."

The facts you have provided include: (1) Taxpayer sold stock of a third-party to Buyer for an agreed-upon amount ("Sale Price"); (2) The transfer of the stock was restricted and convertible into another class of stock, publicly traded and issued by the same third-party, upon the conclusion of certain contingencies outside the control of Taxpayer and Buyer; (3) Simultaneous with the stock sale, Taxpayer and Buyer entered into Agreement, labeled as a share swap, under which Taxpayer agreed to make certain payments, at any time, related primarily to the decline in the conversion rate of the restricted stock into the publicly traded stock; (4) Under the Agreement, Taxpayer generally was also entitled to receive payments at any time in the event there was an increase in the conversion rate of the restricted stock into the publicly traded stock (however we have no information indicating that the parties to the Agreement reasonably expected that any such payments would ever be made); (5) The terms of the stock sale and the Agreement were negotiated together, and the stock Sale Price would have been substantially lower if Taxpayer had not agreed to enter into the Agreement; (6) Taxpayer subsequently made substantial payments under Agreement, deducting the full amounts as capital losses in the years they were paid; and (7) Taxpayer never received any payments under the Agreement.

Based on the facts provided and our analysis to date, characterizing the payments as made pursuant to something other than a notional principal contract (in this case, as an adjustment to the sales price) is a more appropriate result.